

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 01, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NO. 2:23-CV-00179-SAB

*In re*

*Whitworth University Data Breach*

**ORDER GRANTING MOTION  
FOR PROTECTIVE ORDER**

Before the Court is the parties' Stipulated Motion for Protective Order, ECF No. 27. The motion was heard without oral argument. Plaintiff Patrick Loyola is represented by Kevin Laukaitis, Brian Bleichner, and Samuel Strauss. Plaintiff Rachel Wilson is represented by Jason Dennett, Kaleigh Boyd, Kim Stephens and Samuel Strauss. Plaintiff Danielle Wyman is represented by Samuel Strauss. Defendant is represented by David Liu, David Spellman and Andrea Bernarding.

Defendant Whitworth University and the named Plaintiffs move for a stipulated protective order in this putative class action stemming from the cybersecurity incident that occurred on or about July 29, 2023. The incident involved personally identifiable information including student numbers and social security numbers, and other sensitive information, some personal health information as defined in 45 C.F.R. 105, and other confidential, proprietary, and or private information. The discovery in this case relates to the cybersecurity incident, the protected information, Whitworth's response, and other confidential, proprietary, or private information including for example pricing and terms of with security and responsive vendors. Given the nature of this class action, good cause

**ORDER GRANTING MOTION FOR PROTECTIVE ORDER ~ 1**

exists to enter the Protective Order.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Motion for Protective Order, ECF No. 27, is  
**GRANTED.**

2. The Court enters the following Protective Order:

### **PROTECTIVE ORDER**

#### **1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

1.1. Protected Material designated under the terms of this Stipulated Protective Order shall be used by a Receiving Party solely for this lawsuit and shall not be used directly or indirectly for any other purpose whatsoever unless agreed upon in writing by the parties.

1.2. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Federal Rule of Civil Procedure 26(c) and Local Civil Rule 7 sets forth the procedures that must be followed when a party seeks permission from the court to file material under seal.

#### **2. DEFINITIONS**

2.1. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2. "CONFIDENTIAL" Information or Items: information (regardless of

1 how it is generated, stored or maintained) or tangible things that qualify for  
2 protection under Federal Rule of Civil Procedure 26(c).

3 2.3. Counsel (without qualifier): Counsel of Record.

4 2.5. Designating Party: a Party or Non-Party that designates information or  
5 items that it produces in disclosures or in responses to discovery as  
6 “CONFIDENTIAL”, or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY”.

8 2.6. Disclosure or Discovery Material: all items or information,  
9 regardless of the medium or manner in which it is generated, stored, or maintained  
10 (including, among other things, testimony, transcripts, and tangible things), that are  
11 produced or generated in disclosures or responses to discovery in this matter.

12 2.7. Expert: a person with specialized knowledge or experience in a matter  
13 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
14 serve as an expert witness or as a consultant in this action, (2) is not a past or  
15 current employee of a Party or of a Party’s competitor, and (3) at the time of  
16 retention, is not anticipated to become an employee of a Party or of a Party’s  
17 competitor.

18 2.8. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
19 Information or Items: extremely sensitive “Confidential Information or Items,”  
20 disclosure of which to another Party or Non-Party would create a substantial risk of  
21 serious harm that could not be avoided by less restrictive means.

22 2.9. House Counsel: attorneys who are employees of a party to this action.

23 2.10. Non-Party: any natural person, partnership, corporation, association, or  
24 other legal entity not named as a Party to this action.

25 2.11. Outside Counsel of Record: attorneys who are not employees of a  
26 party to this action but are retained to represent or advise a party to this action and  
27 have appeared in this action on behalf of that party or are affiliated with a law firm  
28 which has appeared on behalf of that party.

1 2.12. Party: any party to this action, including all of its officers, directors,  
2 employees, consultants, retained experts, and Outside Counsel of Record (and their  
3 support staffs).

4 2.13. Producing Party: a Party or Non-Party that produces Disclosure or  
5 Discovery Material in this action.

6 2.14. Professional Vendors: persons or entities that provide document review  
7 services or other litigation support services (e.g., photocopying, videotaping,  
8 translating, preparing exhibits or demonstrations, and organizing, storing, or  
9 retrieving data in any form or medium) and their employees and subcontractors.

10 2.15. Protected Material: any Disclosure or Discovery Material that is  
11 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY.”

13 2.16. Receiving Party: a Party that receives Disclosure or Discovery  
14 Material from a Producing Party.

### 15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only  
17 Protected Material (as defined above), but also (1) any information copied or  
18 extracted from confidential material; (2) all copies, excerpts, summaries, or  
19 compilations of confidential material; and (3) any testimony, conversations, or  
20 presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this Stipulation and Order do not  
22 cover the following information: (a) any information that is in the public domain at  
23 the time of disclosure to a Receiving Party or becomes part of the public domain  
24 after its disclosure to a Receiving Party as a result of publication not involving a  
25 violation of this Order, including becoming part of the public record through trial  
26 or otherwise; and (b) any information known to the Receiving Party prior to the  
27 disclosure or obtained by the Receiving Party after the disclosure from a source  
28 who obtained the information lawfully and under no obligation of confidentiality to

1 the Designating Party. Any use of Protected Material at trial shall be governed by a  
2 separate agreement or order.

#### 3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations  
5 imposed by this Order shall remain in effect until a Designating Party agrees  
6 otherwise in writing or a court order otherwise directs. Final disposition shall be  
7 deemed to be the later of (1) dismissal of all claims and defenses in this action,  
8 with or without prejudice; and (2) final judgment herein after the completion and  
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
10 including the time limits for filing any motions or applications for extension of  
11 time pursuant to applicable law.

#### 12 5. DESIGNATING PROTECTED MATERIAL

13 5.1. Exercise of Restraint and Care in Designating Material for Protection.  
14 Each Party or Non-Party that designates information or items for protection under  
15 this Order must take care to limit any such designation to specific material that  
16 qualifies under the appropriate standards. To the extent it is practical to do so, the  
17 Designating Party must designate for protection only those parts of material,  
18 documents, items, or oral or written communications that qualify – so that other  
19 portions of the material, documents, items, or communications for which  
20 protection is not warranted are not swept unjustifiably within the ambit of this  
21 Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations  
23 that are shown to be clearly unjustified or that have been made for an improper  
24 purpose (e.g., to unnecessarily encumber or retard the case development process or  
25 to impose unnecessary expenses and burdens on other parties) expose the  
26 Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it  
28 designated for protection do not qualify for protection at all or do not qualify for

1 the level of protection initially asserted, that Designating Party must promptly  
2 notify all other parties that it is withdrawing the mistaken designation.

3 5.2. Manner and Timing of Designations. Except as otherwise provided in  
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
6 under this Order must be clearly so designated before the material is disclosed or  
7 produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic  
10 documents, but excluding transcripts of depositions or other pretrial or trial  
11 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or  
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that  
13 contains protected material. If only a portion or portions of the material on a page  
14 qualifies for protection, the Producing Party also must clearly identify the  
15 protected portion(s) (e.g., by making appropriate markings in the margins) and  
16 must specify, for each portion, the level of protection being asserted, to the extent  
17 practicable.

18 A Party or Non-Party that makes original documents or materials available  
19 for inspection need not designate them for protection until after the inspecting  
20 Party has indicated which material it would like copied and produced. During the  
21 inspection and before the designation, all of the material made available for  
22 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
23 ONLY.” After the inspecting Party has identified the documents it wants copied  
24 and produced, the Producing Party must determine which documents, or portions  
25 thereof, qualify for protection under this Order. Then, before producing the  
26 specified documents, the Producing Party must affix the appropriate legend  
27 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
28 ONLY”) to each page that contains Protected Material. If only a portion or

1 portions of the material on a page qualifies for protection, the Producing Party also  
2 must clearly identify the protected portion(s) (e.g., by making appropriate  
3 markings in the margins) and must specify, for each portion, the level of protection  
4 being asserted.

5 (b) For testimony given in deposition or in other pretrial or trial proceedings,  
6 that the Designating Party identify on the record, before the close of the deposition,  
7 hearing, or other proceeding, all protected testimony and specify the level of  
8 protection being asserted. When it is impractical to identify separately each portion  
9 of testimony that is entitled to protection and it appears that substantial portions of  
10 the testimony may qualify for protection, the Designating Party may invoke on the  
11 record (before the deposition, hearing, or other proceeding is concluded) a right to  
12 have up to 21 days from receipt of the final transcript to identify the specific  
13 portions of the testimony as to which protection is sought and to specify the level  
14 of protection being asserted. Only those portions of the testimony that are  
15 appropriately designated for protection within the 21 days from receipt of the final  
16 transcript shall be covered by the provisions of this Stipulated Protective Order.  
17 Alternatively, a Designating Party may specify, at the deposition or up to 21 days  
18 from receipt of the final transcript afterwards if that period is properly invoked,  
19 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

21 Parties shall give the other parties notice if they reasonably expect a  
22 deposition, hearing or other proceeding to include Protected Material so that the  
23 other parties can ensure that only authorized individuals who have signed the  
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
25 proceedings. The use of a document as an exhibit at a deposition shall not in any  
26 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
27 – ATTORNEYS’ EYES ONLY”.

28 Transcripts containing Protected Material shall have an obvious legend on



1 the title page that the transcript contains Protected Material, and the title page shall  
2 be followed by a list of all pages (including line numbers as appropriate) that have  
3 been designated as Protected Material and the level of protection being asserted by  
4 the Designating Party. The Designating Party shall inform the court reporter of  
5 these requirements. Any transcript that is prepared before the expiration of a 21-  
6 day period for designation shall be treated during that period as if it had been  
7 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its  
8 entirety unless otherwise agreed. After the expiration of that period the transcript  
9 shall be treated for information produced in some form other than documentary  
10 and for any other tangible items, that the Producing Party affix in a prominent  
11 place on the exterior of the container or containers in which the information or  
12 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information or  
14 item warrant protection, the Producing Party, to the extent practicable, shall  
15 identify the protected portion(s) and specify the level of protection being asserted.

16 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
17 failure to designate qualified information or items does not, standing alone, waive  
18 the Designating Party’s right to secure protection under this Order for such  
19 material. Upon timely correction of a designation, the Receiving Party must make  
20 reasonable efforts to assure that the material is treated in accordance with the  
21 provisions of this Order.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1. Timing of Challenges. Any Party or Non-Party may challenge a  
24 designation of confidentiality at any time. Unless a prompt challenge to a  
25 Designating Party’s confidentiality designation is necessary to avoid foreseeable,  
26 substantial unfairness, unnecessary economic burdens, or a significant disruption  
27 or delay of the litigation, a Party does not waive its right to challenge a  
28 confidentiality designation by electing not to mount a challenge promptly after the



1 original designation is disclosed.

2       6.2. Meet and Confer. The Challenging Party shall initiate the dispute  
3 resolution process by providing written notice of each designation it is challenging  
4 and describing the basis for each challenge. To avoid ambiguity as to whether a  
5 challenge has been made, the written notice must recite that the challenge to  
6 confidentiality is being made in accordance with this specific paragraph of the  
7 Protective Order. The parties shall attempt to resolve each challenge in good faith  
8 and must begin the process by conferring directly (in voice to voice dialogue; other  
9 forms of communication are not sufficient) within 21 days of the date of service of  
10 notice. In conferring, the Challenging Party must explain the basis for its belief that  
11 the confidentiality designation was not proper and must give the Designating Party  
12 an opportunity to review the designated material, to reconsider the circumstances,  
13 and, if no change in designation is offered, to explain the basis for the chosen  
14 designation. A Challenging Party may proceed to the next stage of the challenge  
15 process only if it has engaged in this meet and confer process first or establishes  
16 that the Designating Party is unwilling to participate in the meet and confer process  
17 in a timely manner.

18       6.3. Judicial Intervention. If the Parties cannot resolve a challenge without  
19 court intervention, the Designating Party shall file and serve a motion to retain  
20 confidentiality under Federal Rule of Civil Procedure 26(c) (and in compliance  
21 with Local Civil Rule 7(b), if applicable) within 21 days of the initial notice of  
22 challenge or within 14 days of the parties agreeing that the meet and confer process  
23 will not resolve their dispute, whichever is earlier. Each such motion must be  
24 accompanied by a competent declaration affirming that the movant has complied  
25 with the meet and confer requirements imposed in the preceding paragraph. Failure  
26 by the Designating Party to make such a motion including the required declaration  
27 within 21 days (or 14 days, if applicable) shall automatically waive the  
28 confidentiality designation for each challenged designation. In addition, the

1 Challenging Party may file a motion challenging a confidentiality designation at  
2 any time if there is good cause for doing so, including a challenge to the  
3 designation of a deposition transcript or any portions thereof. Any motion brought  
4 pursuant to this provision must be accompanied by a competent declaration  
5 affirming that the movant has complied with the meet and confer requirements  
6 imposed by the preceding paragraph. To the extent these procedures conflict with  
7 the procedures set forth in Local Patent Rule 111 or any other Local Civil Rule, the  
8 Local Civil Rules shall control.

9 The burden of persuasion in any such challenge proceeding shall be on the  
10 Designating Party. Frivolous challenges and those made for an improper purpose  
11 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
12 expose the Challenging Party to sanctions. Unless the Designating Party has  
13 waived the confidentiality designation by failing to file a motion to retain  
14 confidentiality as described above, all parties shall continue to afford the material  
15 in question the level of protection to which it is entitled under the Producing  
16 Party's designation until the court rules on the challenge.

## 17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1. Basic Principles. A Receiving Party may use Protected Material that is  
19 disclosed or produced by another Party or by a Non-Party in connection with this  
20 case only for prosecuting, defending, or attempting to settle this litigation. Such  
21 Protected Material may be disclosed only to the categories of persons and under  
22 the conditions described in this Order. When the litigation has been terminated, a  
23 Receiving Party must comply with the provisions of section 14 below (FINAL  
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a  
26 location and in a secure manner that ensures that access is limited to the persons  
27 authorized under this Order.

28 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party a  
2 Receiving Party may disclose any information or item designated

3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Counsel of Record in this action, as well as  
5 employees and contractors of said Counsel of Record to whom it is reasonably  
6 necessary to disclose the information for this litigation and who have signed the  
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
8 A;

9 (b) the officers, directors, and employees (including House Counsel) of the  
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom  
13 disclosure is reasonably necessary for this litigation and who have signed the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) any mediator who is assigned to hear this matter, and his or her staff,  
16 subject to their agreement to maintain confidentiality to the same degree as  
17 required by this Protective Order, and who have signed the “Acknowledgment and  
18 Agreement to Be Bound” (Exhibit A);

19 (e) the court and its personnel;

20 (f) court reporters and their staff, professional jury or trial consultants,  
21 graphic consultants, and Professional Vendors to whom disclosure is reasonably  
22 necessary for this litigation and who have signed the “Acknowledgment and  
23 Agreement to Be Bound” (Exhibit A);

24 (g) during their depositions, witnesses in the action to whom disclosure is  
25 reasonably necessary and who have signed the “Acknowledgment and Agreement  
26 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
27 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
28 depositions that reveal Protected Material must be separately bound by the court

1 reporter and may not be disclosed to anyone except as permitted under this  
2 Stipulated Protective Order.

3 (h) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.

5 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
6 ONLY” Information or Items. Unless otherwise ordered by the court or permitted  
7 in writing by the Designating Party, a Receiving Party may disclose any  
8 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY” only to:

10 (a) the Receiving Party’s Counsel of Record in this action, as well as  
11 employees and contractors of said Counsel of Record to whom it is reasonably  
12 necessary to disclose the information for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
14 A;

15 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
16 necessary for this litigation, (2) who have signed the “Acknowledgment and  
17 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth  
18 in paragraph 7.4(a)(2), below, have been followed;

19 (c) any mediator who is assigned to hear this matter, and his or her staff,  
20 subject to their agreement to maintain confidentiality to the same degree as  
21 required by this Protective Order, and who have signed the “Acknowledgment and  
22 Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants  
25 graphic consultants, and Professional Vendors to whom disclosure is reasonably  
26 necessary for this litigation and who have signed the “Acknowledgment and  
27 Agreement to Be Bound” (Exhibit A); and

28 (f) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information.

2 7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
4 Designated House Counsel or Experts.

5 (a) (1) Unless otherwise ordered by the court or agreed to in writing by the  
6 Designating Party, a Party that seeks to disclose to Designated House Counsel any  
7 information or item that has been designated “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a  
9 written request to the Designating Party that (1) sets forth the full name of the  
10 Designated House Counsel and the city and state of his or her residence, and (2)  
11 describes the Designated House Counsel’s current and reasonably foreseeable  
12 future primary job duties and responsibilities in sufficient detail to determine if  
13 House Counsel is involved, or may become involved, in any competitive decision-  
14 making.

15 (2) Unless otherwise ordered by the court or agreed to in writing by the  
16 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
17 Order) any information or item that has been designated “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)  
19 first must make a written request to the Designating Party that (1) identifies the  
20 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY” information that the Receiving Party seeks permission to disclose to the  
22 Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
23 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies  
24 the Expert’s current employer(s), (5) identifies each person or entity from whom  
25 the Expert has received compensation or funding for work in his or her areas of  
26 expertise or to whom the expert has provided professional services, including in  
27 connection with a litigation, at any time during the preceding five years, and (6)  
28 identifies (by name and number of the case, filing date, and location of court) any

1 litigation in connection with which the Expert has offered expert testimony,  
2 including through a declaration, report, or testimony at a deposition or trial, during  
3 the preceding five years.

4 (b) A Party that makes a request and provides the information specified in  
5 the preceding respective paragraphs may disclose the subject Protected Material to  
6 the identified Designated House Counsel or Expert unless, within 14 days of  
7 delivering the request, the Party receives a written objection from the Designating  
8 Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer  
10 with the Designating Party (through direct voice to voice dialogue) to try to resolve  
11 the matter by agreement within seven days of the written objection. If no  
12 agreement is reached, the Party seeking to make the disclosure to the Expert may  
13 file a motion as provided in Federal Rule of Civil Procedure 26 and Local Civil  
14 Rule 37 (and in compliance with Local Civil Rule 7(b), if applicable) seeking  
15 permission from the court to do so. Any such motion must describe the  
16 circumstances with specificity, set forth in detail the reasons why the disclosure to  
17 the Expert is reasonably necessary, assess the risk of harm that the disclosure  
18 would entail, and suggest any additional means that could be used to reduce that  
19 risk. In addition, any such motion must be accompanied by a competent  
20 declaration describing the parties' efforts to resolve the matter by agreement (i.e.,  
21 the extent and the content of the meet and confer discussions) and setting forth the  
22 reasons advanced by the Designating Party for its refusal to approve the disclosure.

23 In any such proceeding, the Party opposing disclosure to the Expert shall  
24 bear the burden of proving that the risk of harm that the disclosure would entail  
25 (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
26 the Protected Material to its Expert.

27 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
28 OTHER LITIGATION

1 If a Party is served with a subpoena or a court order issued in other litigation  
2 that compels disclosure of any information or items designated in this action as  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
4 ONLY” that Party must:

5 (a) promptly notify in writing the Designating Party. Such notification shall  
6 include a copy of the subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena or order to  
8 issue in the other litigation that some or all of the material covered by the subpoena  
9 or order is subject to this Protective Order. Such notification shall include a copy  
10 of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued  
12 by the Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the  
14 subpoena or court order shall not produce any information designated in this action  
15 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY” before a determination by the court from which the subpoena or order  
17 issued, unless the Party has obtained the Designating Party’s permission. The  
18 Designating Party shall bear the burden and expense of seeking protection in that  
19 court of its confidential material – and nothing in these provisions should be  
20 construed as authorizing or encouraging a Receiving Party in this action to disobey  
21 a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
23 IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-  
25 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced  
27 by Non-Parties in connection with this litigation is protected by the remedies and  
28 relief provided by this Order. Nothing in these provisions should be construed as



1 prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to  
3 produce a Non-Party's confidential information in its possession, and the Party is  
4 subject to an agreement with the Non-Party not to produce the Non-Party's  
5 confidential information, then the Party shall:

6 1. promptly notify in writing the Requesting Party and the Non-  
7 Party that some or all of the information requested is subject to a  
8 confidentiality agreement with a Non-Party;

9 2. promptly provide the Non-Party with a copy of the Stipulated  
10 Protective Order in this litigation, the relevant discovery request(s), and a  
11 reasonably specific description of the information requested; and make the  
12 information requested available for inspection by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court  
14 within 14 days of receiving the notice and accompanying information, the  
15 Receiving Party may produce the Non-Party's confidential information.

16 responsive to the discovery request. If the Non-Party timely seeks a  
17 protective order, the Receiving Party shall not produce any information in its  
18 possession or control that is subject to the confidentiality agreement with the Non-  
19 Party before a determination by the court. Absent a court order to the contrary, the  
20 Non-Party shall bear the burden and expense of seeking protection in this court of  
21 its Protected Material.

## 22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has  
24 disclosed Protected Material to any person or in any circumstance not authorized  
25 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
26 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
27 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
28 the person or persons to whom unauthorized disclosures were made of all the terms

1 of this Order, and (d) request such person or persons to execute the  
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
3 A.

#### 4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 5 PROTECTED MATERIAL

6 If information is produced in discovery that is subject to a claim of privilege  
7 or of protection as trial-preparation material, the party making the claim may notify  
8 any party that received the information of the claim and the basis for it. After being  
9 notified, a party must promptly return or destroy the specified information and any  
10 copies it has and may not sequester, use or disclose the information until the claim  
11 is resolved. This includes a restriction against presenting the information to the  
12 court for a determination of the claim. This provision is not intended to modify  
13 whatever procedure may be established in an e-discovery order that provides for  
14 production without prior privilege review. Pursuant to Federal Rule of Evidence  
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
16 of a communication or information covered by the attorney-client privilege or  
17 work product protection, the parties may incorporate their agreement in the  
18 stipulated protective order submitted to the court.

#### 19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
21 person to seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
23 Protective Order no Party waives any right it otherwise would have to object to  
24 disclosing or producing any information or item on any ground not addressed in  
25 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
26 any ground to use in evidence of any of the material covered by this Protective  
27 Order.

28 12.4. Filing Protected Material. Without written permission from the

1 Designating Party or a court order secured after appropriate notice to all interested  
2 persons, a Party may not file in the public record in this action any Protected  
3 Material. A Party that seeks to file under seal any Protected Material must comply  
4 with Federal Rule of Civil Procedure 26(c). Protected Material may only be filed  
5 under seal pursuant to a court order authorizing the sealing of the specific  
6 Protected Material at issue. Pursuant to Federal Rule of Civil Procedure 26(c), a  
7 sealing order will issue only upon a request establishing that the Protected Material  
8 at issue is privileged, protectable as a trade secret, or otherwise entitled to  
9 protection under the law. If a Receiving Party's request to file Protected Material  
10 under seal pursuant to Federal Rule of Civil Procedure 26(c) and Local Civil Rule  
11 37 is denied by the court, then the Receiving Party may file the Protected Material  
12 in the public record pursuant to Local Civil Rule 7 unless otherwise instructed by  
13 the court.

### 14 13. FINAL DISPOSITION

15 13.1. Within 60 days after the final disposition of this action, as defined in  
16 paragraph 4, each Receiving Party must return all Protected Material to the  
17 Producing Party or destroy such material. As used in this subdivision, "all  
18 Protected Material" includes all copies, abstracts, compilations, summaries, and  
19 any other format reproducing or capturing any of the Protected Material. Whether  
20 the Protected Material is returned or destroyed, the Receiving Party must submit a  
21 written certification to the Producing Party (and, if not the same person or entity, to  
22 the Designating Party) by the 60-day deadline affirms that the Receiving Party has  
23 not retained any copies, abstracts, compilations, summaries or any other format  
24 reproducing or capturing any of the Protected Material. Notwithstanding this  
25 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
26 papers, trial, deposition, and hearing transcripts, legal memoranda,  
27 correspondence, deposition and trial exhibits, expert reports, attorney work  
28 product, and consultant and expert work product, even if such materials contain

1 Protected Material. Any such archival copies that contain or constitute Protected  
2 Material remain subject to this Protective Order as set forth in Section 4  
3 (DURATION).

4 14. RULE 502(d) ORDER

5 Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-  
6 product-protected document, whether inadvertent or otherwise, is not a waiver of  
7 privilege or protection from discovery in this case or in any other federal or state  
8 proceeding. For example, the mere production of privileged or work-product-  
9 protected documents in this case as part of a mass production is not itself a waiver  
10 in this case or in any other federal or state proceeding. For the purposes of this  
11 Order, the term inadvertent shall be defined as “accidental” or “not on purpose.”

12 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
13 file this Order and provide copies to counsel.

14 **DATED** this 1st day of July 2024.



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20

A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line drawn underneath it.

21 Stanley A. Bastian  
22 Chief United States District Judge  
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